

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: NDIKA, J.A., KWARIKO, J.A., And FIKIRINI, J.A.)

CIVIL APPEAL NO. 88 OF 2018

BRYSON BWIRE MBONDE APPELLANT

VERSUS

TANZANIA REVENUE AUTHORITY RESPONDENT

**(Appeal from the Decision of the High Court of Tanzania
at Mwanza)
(Gwae, J.)**

dated the 16th day of September, 2016

in

(DC) Civil Appeal No. 54 of 2014

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JUDGMENT OF THE COURT

28th June, & 5th July, 2021

KWARIKO, J.A.:

This is a second appeal. The appellant was aggrieved by the decision of the High Court of Tanzania sitting at Mwanza (Gwae, J.) in (DC) Civil Appeal No. 54 of 2014 which overturned the decision of the District Court of Musoma at Musoma (the trial court). The appellant was awarded by the trial court general damages to the tune of TZS 15,000,000.00 with interest of 7% per annum from the date of judgment to full satisfaction. The award was for loss of business following delay in re-registration of his motor vehicle Minibus Toyota

Hiace No. TZK 9565 (henceforth "the vehicle") which was doing business of carrying passengers between Musoma and Bisumwa area within Mara Region.

The facts of the case which unfolded before the trial court were not complicated; they are as follows. The appellant claimed that the respondent delayed to register the vehicle into a new single identification number for motor vehicles as required under Regulation 18 (1) of the Road Traffic (Motor Vehicles Registration) Regulations, G.N. No. 177 of 2001 which came into operation on 17th August, 2001 (the Regulations).

The appellant further claimed that he responded to the requirement by paying the necessary fees of TZS 52,000.00 for re-registration and was asked to collect the new number for the vehicle within 14 days but that was not the case. He claimed that the respondent negligently failed to give him new registration number for more than three years despite several reminders.

Basing on the alleged negligence and unreasonable delay, the appellant sued the respondent for judgment and decree for TZS 53,487,850.00 for loss of profits and general damages to be assessed by

the court, interest at 35% from the date of filing the suit to the date of judgment, court's interest at 9% from the date of judgment till full payment and costs of the suit.

For her part, the respondent admitted to have received the appellant's application but delayed to complete the process since she discovered that the chassis number of the vehicle which the appellant filled in the form was different from the actual one. The respondent further claimed that Regulation 41 (3) of the Regulations did not provide specific time within which to register motor vehicles. She thus permitted the appellant to use the vehicle until the new number was issued. The appellant thus claimed that the decision of the respondent to park the vehicle was at his own peril.

Aggrieved by the trial court's decision, the respondent appealed to the High Court where she raised a total of seven grounds. The first ground of appeal was as follows:

"That the trial court erred in law in entertaining and trying the suit whilst it had no original jurisdiction."

After hearing the parties, the first appellate court allowed the appeal on the basis of the first ground. That court found that according to section 7 of the Tax Revenue Appeals Act [CAP 408 R.E. 2002] (the

TRAA), ordinary courts like the trial court are ousted from hearing matters emanating from revenue laws. It therefore found that the trial court lacked jurisdiction to entertain the suit.

The appellant was not amused with that decision; hence he has filed this appeal through Juristic Law Chambers of Mwanza raising two grounds of appeal:

- 1. That, the Learned High Court Judge erred in law in holding that the trial court had no jurisdiction to entertain the matter before it.*
- 2. That, the Learned High Court Judge erred in law and fact for not holding that the exhibits tendered before the trial court were not endorsed by the trial court and the parties.*

During the hearing of the appeal, Messrs. Elias Hezron and Deus Richard, learned advocates joined forces to represent the appellant, whilst the respondent was represented by Mr. Hospis Maswanyia, learned Senior State Attorney, who was assisted by Mr. Leyan Sabore, learned State Attorney.

When he was called upon to argue the appeal, Mr. Richard abandoned the second ground and argued the first ground only. He

submitted that the High Court erred to hold that the trial court had no jurisdiction to try the suit. He explained that section 7 of the TRAA, gives the Board powers to determine tax related matters but the provision should be read together with section 12 thereof which specifies the types of disputes to be determined by the Board. He argued that its only matters relating to tax assessment which are triable by the Board thus the High Court was wrong to relate the appellant's claims for damages in that respect. That according to paragraphs 7, 8 and 9 of the plaint, the appellant's claim was for compensation for loss of business arising out of the respondent's delay to register his vehicle. Likewise, paragraph 5 of the written statement of defence by the respondent admitted that the appellant had paid the required tax hence there was no any issue in relation to tax assessment. Additionally, the learned counsel submitted that the issues framed at the trial court did not reflect anything in relation to tax or its assessment.

It was Mr. Richard's further argument that the decision of **Mohsin Somji v. Commissioner for Customs and Excise & Commissioner for Tax Investigations** [2004] TLR 66 which the High Court relied upon in interpreting section 7 of the TRAA was distinguishable from the instant case because the appellant did not dispute any tax assessment.

He contended that the Board as a special forum for tax matters could not deal with issues of assessment of damages but the ordinary courts. To support his contention, the learned counsel made reference to the Court's decision in **Attorney General v. Lohay Akonaay and Joseph Lohay** [1995] TLR 80. He finally urged us to quash the decision of the High Court and allow the appeal with costs.

Upon being probed by the Court, Mr. Richard submitted that in the case of **Tanzania Revenue Authority v. New Musoma Textiles Limited**, Civil Appeal No. 93 of 2009 (unreported), equally the Court interpreted section 7A of the TRAA and the facts were different from the instant case.

In response to the foregoing, Mr. Maswanyia argued that section 7 of the TRAA gives the Board powers to entertain civil disputes arising out of the respondent's administration of revenue laws. Therefore, the appellant's claim at page 76 of the record of appeal relates to compensation for damages for loss of business is a civil matter, which was justiciable by the Board. To fortify this contention, the learned counsel cited the Court's decision in **Khofu Mlewa v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 229 of 2019 (unreported). The learned counsel argued further that section 7A of the

TRAA at that time provided the procedure in respect of tax assessment. He also referred to section 14 which lists matters that can be entertained by the Board directly without consideration of section 12 and that the appellant's complaint fell on that category. Mr. Maswanyia cited the case of **New Musoma Textiles Limited** (supra) to support his stance. With these submissions, the learned counsel urged us to dismiss the appeal with costs.

Responding to the Court's probing, Mr. Maswanyia submitted that section 6 of the Tanzania Revenue Authority Act Cap. 399 (the "TRA Act") provides for appeals to the Board where any person is aggrieved by the decision of the Commissioner-General in relation to any act or omission in the course of the discharge of his function conferred upon him under the law set out in the First Schedule to that Act. And that the Motor Vehicle (Tax on Registration and Transfers) Act Cap. 124, (Cap 124) which is relevant in this case is included under Item 12 thereof.

In his rejoinder, Mr. Richard argued that section 14 (1) (a) (b) (c) of the TRAA provides remedies other than claim for damages hence the Board has no jurisdiction over the same. That section 6 of the TRAA ought to be read together with other laws. He finally argued that the

issues in relation to section 7 of the TRAA were not raised in the case of **New Musoma Textiles Limited** (supra).

We have considered the submissions by the learned counsel for the parties and find a crucial issue to decide is whether the trial court had jurisdiction to entertain this matter. We wish to preface our determination by reaffirming a trite law that jurisdiction to adjudicate any matter is a creature of a statute [see for instance **R. S. A Limited v. Hanspaul Automechs Limited Govinderajan Senthil Kumal**, Civil Appeal No. 179 of 2016 (unreported)]. That being the position, section 7 (1) of the Civil Procedure Code [CAP 33 R.E. 2019] provides thus:

"Subject to this Act the courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred."

In the instant case, the respondent has been emphatic that the jurisdiction of ordinary courts has been ousted as regards disputes of civil nature arising out of the revenue laws administered by the respondent making reference to section 7 of the TRAA. Whereas, the appellant has maintained that the proceedings of a civil nature envisaged in that law do not include claim for damages but those

relating to tax assessment. He based his argument on sections 7A and 12 of the TRAA. For clarity, we find it apposite to reproduce these provisions of law at the time of the dispute as follows:

"Section 7. The Board shall have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.

Section 7A. The Board shall not entertain any appeal arising from assessment of tax unless section 12 of this Act is complied with.

Section 12. -(1) Any person who disputes an assessment made upon him may, by notice in writing to the Commissioner General, object to the assessment."

Our understanding of these provisions is that all proceedings of a civil nature arising out of disputes from revenue laws administered by the respondent ought to be dealt with by the Board. Furthermore, the Board is precluded from entertaining any appeal relating to tax assessment unless a written notice to the Commissioner is made. We are of the

considered view that tax assessment is one of the categories of proceedings of a civil nature upon which the Board has been conferred jurisdiction to determine. Therefore, section 12 above did not mean to limit the proceedings of a civil nature to assessment of tax only but meant to provide the procedure upon which to access the Board.

In the instant case, the dispute arose when the respondent was administering one of the revenue laws. This is Cap. 124 which is referred to under section 6 of the Tanzania Revenue Authority Act thus:

"Any person who is aggrieved by the decision of the Commissioner-General in relation to any act or omission in the course of the discharge of any function conferred upon him under the law set out in the First Schedule to this Act, may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act."

Item 12 of the First Schedule mentions Cap. 124 which is the revenue law that the respondent was administering when the instant dispute arose. In that case the law required any aggrieved party to appeal to the Board in accordance with the Tax Revenue Appeals Act. It goes without saying that the appellant who was aggrieved by the respondent's act when he was administering the said revenue law was

not exempted from knocking the doors of the Board to present his claims.

The counsel for the parties also locked horns over section 14 of the TRAA which provides:

- "(1) Any person aggrieved by-*
- (a) The calculation by the Commissioner-General of the amount due for refund, drawback or repayment of any tax, duty, levy or charge;*
 - (b) A refusal by the Commissioner- General to make any refund or repayment; or*
 - (c) The decision by the Commissioner General to register, or refusal to register, any trader for the purpose of Value Added Tax Act, may appeal to the Board."*

While Mr. Maswanyia suggested that the appellant could have accessed the Board through that provision, Mr. Richard strongly opposed that idea for the reason that claim of damages is not one of the categories of reliefs listed under that provision. On our part, we hold the view that the type of relief does not determine jurisdiction. Thus, the claim for

compensation may not have been listed in the provision but the controlling provision remains to be section 7 thereof that any proceedings of a civil nature arising from the respondent's administration of revenue laws ought to be determined by the Board.

Mr. Richard further argued that the case of **New Musoma Textiles Limited** (supra) is distinguishable from the instant case because in that case the Court did not interpret section 7 of the TRAA. We do not agree with this line of argument because in that case the Court considered the claim arising out of the respondent's distrained goods by the appellant to be civil in nature hence justiciable by the Board. The Court stated at page 11 that:

"In view of the above analysis, our answer to the posed issue is that the matter that was taken before the High Court by way of Civil Case No. 22 of 2006, was a proceeding of a civil nature in respect of a dispute arising from a revenue law, to wit, the Value Added Tax Act (supra). Since the law is one of those administered by the appellant and on which the Tax Appeals Board had sole original jurisdiction to determine disputes arising therefrom and since the respondent has not shown to the Court that he could not obtain an appropriate remedy from the Board, the

High Court had no jurisdiction to hear and determine the suit."

The same view was expressed in the case of **Khofu Mlewa** (supra) where the claim against the respondent was for compensation for sale of certain uncustomed goods which had been seized from the appellant. The Court stated at page 9 that:

*"To begin with, we think it is necessary to reaffirm the position in **New Musoma Textiles Limited** (supra) that, in terms of section 7 of the Act, the Board has the sole original jurisdiction in all proceedings of a civil nature arising from the revenue laws administered by the TRA. In addition, in that decision the Court restated the rule as per section 7 (1) of the CPC that courts (including the High Court) have jurisdiction to try all manner of civil suits except those of which their cognizance is either expressly or impliedly barred."*

For the foregoing analysis, we are settled in our mind that the appellant's claim was of a civil nature arising from the respondent's administration of one of the revenue laws. Thus, according to section 7 of the TRAA it is only the Board that has jurisdiction to determine that claim. It follows therefore that; the trial court had no jurisdiction to determine the suit between the parties.

Consequently, we uphold the decision of the High Court and find the appeal devoid of merit which we hereby dismiss with costs.

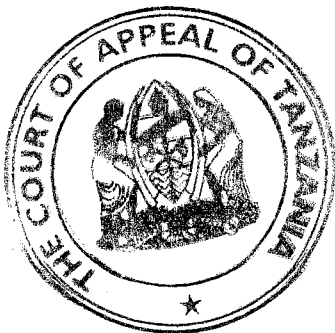
DATED at **DAR ES SALAAM** this 2nd day of July, 2021.

G. A. M. NDIKA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The Judgment delivered this 5th day of July, 2021, in the Presence of Mr. Deus Richard learned Advocate for the Appellant and Ms. Sabina Choghoghwe learned State Attorney also holding brief of Mr. Hospis Mwaswanyia learned Senior State Attorney and Mr. Leyan Sabore, learned State Attorney for the respondent is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL